

Claire Funkhouser/RKV
09/10/2008 12:07 PM

To Brenda Bean/RKV@RKV
cc
bcc

Subject Fw: September 2008 Revisions to Zoning Ordinance -
Time for public review

History:

☞ This message has been forwarded.

Claire F. Funkhouser, CMC
City Clerk/Treasurer
City of Rockville
City Clerk's Office
111 Maryland Avenue
Rockville, Maryland 20850
Phone: 240-314-8282
FAX: 240-314-8289
Email: cfunkhouser@rockvillemd.gov

----- Forwarded by Claire Funkhouser/RKV on 09/10/2008 12:14 PM -----



"Anne Marie Vassallo"
<annemariev@gmail.com>
09/08/2008 05:09 PM

To mayorcouncil@rockvillemd.gov,
shoffmann@rockvillemd.gov, jbritton@rockvillemd.gov,
pgajewski@rockvillemd.gov,
pmarcuccio@rockvillemd.gov,
arobbins@rockvillemd.gov
cc

Subject September 2008 Revisions to Zoning Ordinance - Time
for public review

September 8, 2008

Dear City of Rockville Mayor and Council Members:

I have noted (via a pro-active review of the City's website) that the latest version of the Rockville Zoning Ordinance Draft appears on the Agenda for this week's Mayor and Council meeting:

http://www.rockvillemd.gov/government/mc/agendas_minutes/2008/3108.htm

I urge the Mayor and Council to be extremely judicious in approaching adoption of this latest version of the Zoning Ordinance. A rush to adoption is not in order.

Over the course of a couple summer months with myriad periods of hearing, discussion, worksession and comment, the Mayor and Council were made aware of numerous concerns and observations related to the May 2008 draft Zoning Ordinance, as forwarded by the Planning Commission. Indeed, Staff distilled some 80+ letters into a much-simplified chart for Mayor and Council reference. This volume of information takes time not only to be absorbed both by Staff and by the Mayor and Council, but the Public also should be given the opportunity to determine if Staff has accurately reflected in the latest Draft the concerns that were communicated either by letter or at the public hearings.

There is no doubt Staff spent great time and effort integrating the many comments, observations and concerns into the latest Zoning Ordinance Draft. However, the community and property owners MUST be given the opportunity to review and comment on this latest version to determine if the intent and understanding of the comments and letters has been accurately reflected in the Draft. It serves no purpose at this point to rush to adopt a Zoning Ordinance now that the proverbial "end" may be in sight.

Thank you.

Sincerely,
Anne Marie Vassallo
Croydon Park resident

Exhibit No. 102
Zoning Ordinance Rewrite
PH Dates: 6/16 & 6/30/08



Brenda Bean/RKV
09/10/2008 12:11 PM

To gm@wanada.org
cc mayorcouncil, Susan Swift/RKV@RKV, Deane
Mellander/RKV@RKV, Jim Wasilak/RKV@RKV
bcc
Subject Fw: Rockville's Pending Zoning Ordinance

Dear Mr. Murphy ~

On behalf of the Mayor & Council, I wish to acknowledge receipt of your email. Thank you for taking the time to write and for your interest.

Brenda F. Bean
Deputy City Clerk
111 Maryland Avenue
Rockville, Maryland 20850
email: bbean@rockvillemd.gov
phone: (240) 314-8280
fax: (240) 314-8929

----- Forwarded by Claire Funkhouser/RKV on 09/10/2008 12:14 PM -----



"Gerard Murphy"
<gm@wanada.org>

09/08/2008 04:14 PM

Please respond to
<gm@wanada.org>

To <mayorcouncil@rockvillemd.gov>
cc
Subject Rockville's Pending Zoning Ordinance

Dear Mayor Hoffman and Members of the City Council:

On behalf of the Washington Area New Automobile Dealers Association, I request that you defer action on the pending Zoning Ordinance review on issues which affect our members. As you are aware, the staff recommendations were posted on the city's website on Friday, Sept 5, 2008. The latest staff recommendations raise a variety of issues that we need time to clearly understand on behalf of our members.

We are particularly concerned about the "Conforming Structure" language. This issue was a major point of our previous letter and the new language will require reasonable time to review.

Also, new conditions have been recommended for Motor Vehicle Facility conditional use approval. Once again, automobile industry representatives require an opportunity to understand and to respond to such proposed changes.

The Ordinance does not yet address the previously raised possibility of increasing building height in the MXCD from 75 feet to up to 120 feet where approved by the mayor and Council in a final Sector, Master or Project Plan. The potential for additional building height would help encourage future mixed use redevelopment as part of an automobile dealership redevelopment proposal. The pending Rockville Pike Sector Plan does not include all properties in the City that are expected to be zoned MXCD. Accordingly, the Rockville Pike Plan and any associated Zoning Ordinance changes might not address the totality of the MXCD height issue.

Thank you for your consideration.

Very truly yours,

Gerard N. Murphy
President & CEO

Washington Area New Automobile Dealers Association
5301 Wisconsin Avenue, N.W., Suite 210
Washington, DC 20015
Tel. 202-237-7200 x15
Fax. 202-237-9090
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September 10, 2008

Routed To:

<input checked="" type="checkbox"/> Council	<input type="checkbox"/> City Attorney	William Kominers
<input type="checkbox"/> City Clerk	<input type="checkbox"/> Council Support Specialist	301 215 6610
<input checked="" type="checkbox"/> City Manager	<input checked="" type="checkbox"/> Other <u>Susan Swift</u>	william.kominers@hklaw.com
<u>C. Tucker Parish</u>	<u>Dean Mellander</u>	
	<u>Jim Waselak</u>	

VIA ELECTRONIC MAIL AND OVERNIGHT MAIL

The Honorable Susan R. Hoffmann, Mayor
and Members of the Rockville City Council
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

SEP 11 AM 9:59

Re: Comments (Limited) on Final Draft (September 2, 2008) of Zoning Ordinance Revision

Dear Mayor Hoffmann and Members of the Council:

This letter is to expand upon the comments suggested in my electronic message of September 8, 2008, concerning the Final Draft (September 2) of the Zoning Ordinance Revision. I enclose for your information with this letter the following items representing my preliminary comments on the Final Draft. In the interest of time, I have simply marked up excerpted pages from the Final Draft.

1. Outline of Comments (Limited) providing recommendation and discussion on several sections of the Ordinance, particularly Article 8 (non-conformities), Article 13 (Mixed Use zones), Article 14 (Planned Development zones) and Article 3 (Definitions). (I have provided a longer Outline to the Staff that addresses additional and more technical elements, but incorporates the points in this enclosure.)
2. Handwritten mark-up of Article 14, related to Planned Developments.
3. Handwritten mark-up of Article 13, related to Mixed Use Developments, particularly the MXCD Zone.
4. Handwritten mark-up of Article 8, relating particularly to the grandfather provisions for existing and approved but unbuilt buildings and developments.
5. Handwritten mark-up of Article 3, regarding the definition for "Initial Approving Documents" related to the Planned Development Zones.

The Honorable Susan R. Hoffmann, Mayor
September 10, 2008
Page 2

I understand you will be having your first worksession on September 11, 2008. I am not certain whether you will reach the issues in these Articles, but I will glad to be available at that worksession or thereafter for information and discussion on these and other issues.

Thank you for your consideration of these matters.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "William Kominers". The signature is fluid and cursive, with a period at the end.

William Kominers

Enclosures

cc: Mr. Scott Ullery
Ms. Susan Swift
Mr. James Wasilak
Mr. Deane Mellander
Sondra H. Block, Esquire
Cynthia M. Bar, Esquire

5596806_v1

Comments (Limited) on September 2, 2008, Final Draft Zoning Ordinance Revision

(Submitted by William Kominers, September 10, 2008)

This Outline represents my comments (limited) on the September 2, 2008 Final Draft Zoning Ordinance Revision. These comments are confined to Articles 3, 14, 13 and 8.

Article 3

1. Section 25.03.02, Definition of "Initial Approving Documents." This definition could be more explicit in describing all the elements that go into the approval of a Planned Development project ("PD").

(a) Change the term "Initial Approving Documents" to delete "Initial" and replace it with "Overall." The term "Initial" can be confusing, because it incorporates subsequent amendments of the original, "initial" approval. So as to clearly refer to the overall, organic approval for the entire PD project (rather than an individual element of that PD), the term "Overall" Approving Documents seems more appropriate.

(b) The provisions to be incorporated from the existing Ordinance are not properly limited to the elements enumerated in the Final Draft. The lead in language of the definition should add the term "special provisions," after the word "use" in the second line. This would then read "The collection of documents that established the density, use, special provisions, and development standards . . ." (This would be consistent with the definition for "Resolution of Approval" that was previously submitted.)

(c) Subsection d. Subsection d. references the provisions of the Chapter (i.e., the Zoning Ordinance) that are applicable "at the time of . . . the resolution of approval or the approved Preliminary Development Plan" for the PD. With this language, each PD would then reference and incorporate a different version of the Ordinance, based upon the at the time of the approval of each Resolution. Changes to the Ordinance that have occurred subsequent to the approval Resolution, but which may have been utilized in implementing the approval, could potentially be excluded. I believe that the majority of the PDs are abiding by the standards of the Ordinance as it exists today, prior to the adoption of the new Ordinance. Therefore, Subsection d. should instead incorporate by reference the version of the Ordinance "immediately before the adoption date of the new Zoning Ordinance."

Use of the provisions of the Ordinance "immediately before the adoption date of the new Zoning Ordinance" will be much simpler for administration. This was the language used in my original draft of the "Resolution of Approval" definition. By looking at the provisions of the Ordinance "at the time of the Resolution," each Resolution (and thus each PD Zone) will have to look at a snapshot of the Ordinance at a different point in time. Under my new proposed language, looking at the Ordinance "immediately before" the adoption of the new Zoning Ordinance, all the PD Zones will use the same prior Ordinance text – at a single point in time. This will substantially ease administration, as only one Ordinance, and only the most current Ordinance, will be needed.

(d) Subsection d. should indicate that the referenced provisions of the current Ordinance are "incorporated by reference" into the new Planned Development Zones for this purpose.

Article 14

1. Section 25.14.07.d.1. This paragraph should reinstate the language "as set forth in the previous Ordinance" and remove the language added by Final Draft "in effect at the time of approval." (This will conform to the correction suggested in the discussion of the definition in Article 3, above.)

In many instances, amendments have been made to the provisions of the current Ordinance that affect the Special Development Procedure Zones. These amendments may have occurred subsequent to a particular PD approval, but those amended provisions have then been utilized in the implementation of that PD.

This situation is particularly applicable in the commercial/ mixed use PDs. For example, forest conservation requirements, the provisions dealing with aboveground, high voltage transmission lines, and the provisions related to shared parking credits for mixed use, have been subsequent additions to the provisions for many PDs. In many instances, these provisions were not in place at the time of the "initial approval of the resolution" for a particular project. However, the intention of the Ordinance, as well as the practice of the City, has been to apply those standards to the implementation of each of those PDs. The new Ordinance should continue to apply that standard and not go backwards.

2. Section 25.14.07.d.2(d). Add to Subsection (b) the text ", partially completed," in front of the text "or unbuilt portions". Without this change to explicitly cover parts of the PDs that have not yet been completed or even begun, one would need

to add back, as a new subsection, the deleted language stating "portions of a Planned Development project where construction has not been commenced but where a use permit or a detailed application has been approved as of [effective date]. Implementation of an approved use permit or detailed application may proceed unless those approvals expire without implementation." The proposed additional text makes the coverage more explicit.

3. Section 25.14.07.e, Amendment of a Planned Development. This section needs to exclude from treatment as a "change" in the Overall [Initial] Approving Documents, the initial adoption and future amendment of the Zoning Ordinance (i.e., the adoption of the new Ordinance).

Now that portions of the existing Zoning Ordinance are included within the definition of the Overall [Initial] Approving Documents, a change in the provisions of the existing Zoning Ordinance -- such as what is brought about by the wholesale adoption of the new Ordinance -- could be read as requiring a Planned Development amendment. While this is highly technical and not likely something that would be argued in the future by the City, it leaves a potential ambiguity that could be misunderstood later.

4. Section 25.14.07.f. Add the phrase "as applied to only the particular site plan for which the application is made" at the end of the sentence. This will allow the evaluation called for under Article 7 to apply only to the contexts of the particular site plan for which application is being made, rather than bringing into the calculation equation the points arising from the entirety of the Planned Development.

Article 13

1. Section 25.13.05.b.2. The provisions for building height for the MXTD Zone and the MXCD Zone seem to use conflicting language. The MXTD Zone allows "additional building height up to 120 feet at the street," where the MXCD Zone allows "additional building height up to 75 feet at the building line." Is this an intended distinction between "at the street" and "at the building line"? To be the same relative location, the terminology should be similar. The Ordinance should use "at the street" throughout, otherwise the height standard for the facades would apply to all sides of a building, not just those along the street.

2. Section 25.13.05.b.2(e). This section should restore the explicit exclusion of the layback slope: (i) to areas within a PD Zone, and (ii) relative to adjacency to sites that are in a single unit detached residential zone development that is recommended for

non-residential uses. At such time as redevelopment occurs within the Planned Development zones, the layback slope should not apply internally.

3. Section 25.13.07.b.6. In the last sentence, the words "at the side or rear" should be inserted after the word "parking." The sentence would then read: "all parking at the side or rear must be screened to prevent vehicle headlights from shining onto adjoining residential properties." Parking that is located in the front, to serve first floor retail, should not be subject to screening requirements.

Article 8

1. Former Section 25.08.03. Nonconformities in General. This Section should be restored. Without this Section, there does not appear to be any provision to explicitly allow development to continue (as non-conforming), once it becomes non-conforming due to the New Ordinance.

2. Section 25.08.06. Certain Existing Structures or Development (Grandfathering).

(a) Section 25.08.06.a. does not address the situation of development that is approved under the current Ordinance but then is not constructed until after adoption of the new Ordinance. By limiting the applicability to "any existing structure or development," this Section implies that the protected elements must be "physically in existence" at the time the new Ordinance is adopted. This is unfair to those projects which have obtained approvals under the existing Ordinance but have not yet been able to commence or complete construction before the new Ordinance is adopted. Clearly, under the Transitional Provisions of Section 25.08.02, these approvals are allowed to continue and be implemented. However, once built, are they conforming (by being grandfathered) or non-conforming? They should be protected as being "deemed conforming" once the new Ordinance is in place, just as if they physically existed beforehand.

The Transitional Provisions of Section 25.08.02 do not adequately address this situation. Although the Transitional Provisions indicate that an approved plan may be implemented in accordance with its earlier approval, the Transitional Provisions do not address whether or not, or in what manner, once constructed pursuant to that approval, the development is conforming or non-conforming under the new Ordinance.

If the intention is to treat the implementation of those earlier approvals as if they are "existing development" under Section 25.08.06, then in either Section 25.08.06 or Section 25.08.02 that matter should be stated explicitly, so that for purposes of financing,

reconstruction in the event of casualty, etc., a specific conforming provision will be available to demonstrate to lenders.

Alternative language to deal with this issue had been presented during the worksessions (in the context of this provision being in Section 25.13.05.d at the time). This earlier proposed language is as follows (underlined):

"Any structure or development in existence or for which development approval such as a use permit approval, detailed application approval, building permit approval or any other development approval has been obtained as of [effective date] is considered to be conforming"

(b) The language in Section 25.08.06.a. indicates that this existing development is considered to be conforming "for purposes of reconstruction." That is very limited, more limited than the language included in the Planning Commission draft which indicated that such development is simply "considered to be conforming." In Section 25.08.06.a. the language for "purposes of reconstruction" should be deleted, and replaced with "and is".

(c) The language in Section 25.08.06.a. "considered to be" conforming should be changed to "deemed to be" conforming. The existing development is intended to be conforming, not just "considered" to be.

ARTICLE 14

KOMINER

9/9/08

MAYOR AND COUNCIL FINAL DRAFT 9-2-08

- a. *Purposes* – Prior to _____ [effective date], developments with special provisions for development standards and types of uses were approved through several types of special development procedures (Comprehensive Planned Development, Planned Residential Unit, Preliminary Development Plan, I-3 Zone Optional Method, etc.). Under these procedures, the development approved may have little or no relation to the underlying zone or zones. In order to more clearly identify ~~such planned developments approved development and to ease the administration of these properties in the land records, these special developments~~ are each being placed in their own Planned Development Zone, and the Initial Approving Documents. ~~As such, the resolutions of approval adopted by the Mayor and Council and the Preliminary Development Plans approved by the Planning Commission, along with any accompanying documents, any subsequent amendments thereto, and related development standards, are included by reference~~ in the respective Planned Development Zones. In addition, one (1) or more equivalent zones are designated for each Planned Development Zone.

AS THE
STANDARDS
THAT ARE
APPLICABLE

b. *Uses*

1. Only those uses specifically permitted by the initial approving documents ~~any of the following~~ are allowed in a Planned Development Zone.
- (a) ~~The resolution of approval or an approved preliminary development plan;~~
or
- (b) ~~The provisions of the Zoning Ordinance in effect and applicable to the particular planned development at the time of the resolution of approval or approved preliminary development plan.~~
2. Notwithstanding the provisions of subsection 25.14.07.b.1. above, the Mayor and Council, in connection with an amendment to an approved Planned Development plan, may allow one (1) or more of those uses set forth in the equivalent zone specified for those areas of the Planned Development plan designated for nonresidential uses.

OVERALL
CHANGE THROUGHOUT THIS SECTION

c. *Zones Established*

1. *Principally Single-Unit Residential Developments* – The following are principally single-unit residential Planned Developments in the City:
- (a) PD-RS – Rockshire;
- (b) PD-FM – Fallsmead;
- (c) PD-FM2 – Fallsmead 2;

MAYOR AND COUNCIL FINAL DRAFT 9-2-08

- (d) PD-FB – Fallsbend;
- (e) PD-CH – Carter Hill;
- (f) PD-BA – Barnside Acres;
- (g) PD-FL – Flint Ledge Estates;
- (h) PD-RH – Rose Hill;
- (i) PD-RHF – Rose Hill Falls;
- (j) PD-BU – Buckingham Property.;
- (k) PD-CL – Chestnut Lodge;
- (l) PD-NM – New Mark Commons;
- (m) PD-DF – Dawson Farm;
- (n) PD-MH – Meadow Hall;
- (o) PD-RF – Redgate Farm; and
- (p) PD-LG – Legacy at Lincoln Park.

2. *Principally Mixed-Use Residential and Commercial Development* - The following are principally mixed-use residential and commercial developments in the City:

- (a) PD-KF – King Farm;
- (b) PD-FG – Fallsgrove;
- (c) PD-UR – Upper Rock;
- (d) PD-TO – Tower Oaks;
- (e) PD-KSI – KSI Apartments;
- (f) PD-TC – Twinbrook Commons;
- (g) PD-RCI – Rockville Center, Inc.; and

(h) PD-TS – Town Square.

3. *Principally Commercial Development* - The following are principally commercial developments in the City:

(a) PD-SG – Shady Grove;

(b) PD-MC – Metro Center; and

(c) PD-CB – Champion Billiards.

d. *Development Standards*

~~4.1.~~ *General Policy* - The ~~Planned Development~~ Planned Development projects located in the ~~Planned Development Zones~~ were approved by the Mayor and Council or Planning Commission as a unified, coherent design. Depending on the project, the development standards may, or may not, have been specified in the project approvals. In some instances the development standards of the underlying zone (as set forth in the ordinance in effect at the time of the previous ordinance) of approval applied to some aspects of the development project, and were not restated in the project approval. In addition, a number of the projects are subject to annexation agreements or development agreements with the City that have specific terms for how the development will proceed. All of these documents constitute the Initial Approving Documents as defined in §25.03.02.

REST

~~3.2.~~ *Approved Development Standards* - The development standards (including, but not limited to, those standards for building heights, setbacks, lot coverage, lot sizes, density, and open space) set forth in the ~~Initial Approving Documents~~ resolution of approval, approved Preliminary Development Plan, approved use permit, or approved detailed application apply to the following:

, PARTIALLY
COMPLETED,

(a) Completed Planned Development projects;

(b) Completed or unbuilt portions of Planned Development projects;

(c) Replacement in kind in of any completed portion of a planned ~~Planned development Development projects or completed portions of such development projects; and~~

3. *Equivalent Zone Development Standards* - ~~Approval~~ Where, in the determination of the Approving Authority, the resolution of approval or approved Preliminary Development Plan does not provide specific standards,

MAYOR AND COUNCIL FINAL DRAFT 9-2-08

The development standards ~~for~~ of the equivalent zone designation for each Planned Development Zone apply to

4.(a) In the absence in the Initial Approving Document of specific development standards related to minimum setbacks, maximum building height, lot coverage or lot dimensions:

(b) To that portion of an approved Planned Development Plan for which a major amendment to the Initial Approving Documents is sought unless waived in accordance with subsection 25.14.07d.5.

(c) Redevelopment of any portion of a Planned Development.

~~(a) Any portion of a Planned Development project that does not have either an approved use permit or an approved detailed application, or~~

~~(b) Any portion of a Planned Development project for which an amendment to an approved use permit or detailed application is sought.~~

~~Portions of a Planned Development project where construction has not commenced but where a use permit or detailed application has been approved as of _____ [effective date]. Implementation of an approved use permit or detailed application may proceed unless those approvals expire without implementation.~~

~~Development Standards for Amendment to a Planned Development Approval~~

~~(da) The development standards for the equivalent zone will supersede the development standards contained in the Initial Approving Documents resolution of approval or the approved Preliminary Development Plan for only that portion of the Planned Development plan subject to the amendment, or redevelopment.~~

MAJOR

~~(b) Subject to the provisions of subsection 25.14.07.d.6.(c), nothing herein shall preclude the Mayor and Council from applying certain standards of the equivalent zone to the entire Planned Development project if, pursuant to subsection 25.14.07.d.6. below, the portion of the development plan being amended is not required to comply with all of the development standards of the equivalent zone.~~

5.4. Waiver of Equivalent Zone Standards- The Approving Authority may waive the application of one (1) or more of the development standards of the designated equivalent zone upon a finding that the applicant has shown good cause as to why the development standard should not apply to any portion of the Planned Development project. In determining whether the burden of establishing good cause has been met, the Approving Authority must consider the following:

MAYOR AND COUNCIL FINAL DRAFT 9-2-08

(a) Whether the development standard of the equivalent zone is consistent with the completed portion of the Planned Development ~~project~~;

(b) Whether applying the development standard of the equivalent zone is consistent with good planning and design principles;

(c) Whether applying the development standard of the equivalent zone is aesthetically pleasing;

DELETE.
TOTALLY
SUBJECTIVE
AND
ARBITRARY

(d) Whether applying the development standard of the equivalent zone is technically reasonable and practically feasible. (The cost of applying the standard alone, shall not constitute a reasonable practical difficulty.) and;

DELETE

~~(g)~~(e) Such other factor as the Approving Authority deems appropriate.

AND THAT IS
REASONABLE
IN THE
CIRCUMSTANCES

6.e. Amendment of a Planned Development

(BUT NOT
INCLUDING THE
INITIAL ADOPTION
OR FUTURE
AMENDMENTS OF
THIS CHAPTER)

1. When-Required, General - Any change in the provisions of the Initial Approving Documents of the following proposed changes to a Planned Development project will require approval of a Planned Development plan amendment by the Mayor and Council;

(i) Any increase in the intensity of the development (dwelling units, gross square footage, etc.)

(ii) Any increase in building heights

(iii) Types of uses not previously approved;

(iv) A major relocation of public streets;

(v) A reduction or expansion of public or private open space; and

(vi) Such other proposed change in the project that the Planning Commission determines to be of such significance as to require an amendment to the development plan.

2. Procedure - Any proposal to amend ~~the~~ Initial Approving Documents of a previously approved ~~planned~~ Planned development Development plan (exploratory plan, concept plan, or preliminary development plan) requires the filing of a development project plan amendment application with the Chief of Planning. Such application must comply, and will be processed

in accordance, with the requirements for a project plan as set forth in Article 7 of this Chapter.

3. Limitations – Amendments to a the Initial Approving Documents of a planned Planned development Development project approved by the Mayor and Council shall be limited to the substance or area encompassed by the amendment application and may not affect other aspects of the approved planned development project without the consent of the applicant. Nothing, however, shall preclude the Mayor and Council from considering all aspects or areas of the approved planned development project in determining whether or not the requested amendment is appropriate.

(4) Major Planned Development Amendment. The following are major Planned Development Amendments subject to the Equivalent Zone development standards.

- (a) Any increase in the intensity of the development (dwelling units, gross square footage, etc.) beyond what is authorized in the Initial Approving Documents;
- (b) Any increase in building heights beyond what is authorized in the Initial Approving Documents;
- (c) Types of uses not approved in the Initial Approving Documents;
- (d) A major relocation of public streets;
- (e) A material reduction in the cumulative amount of public or private open space; and
- (f) Such other proposed change in the project that the Planning Commission determines to be of such significance as ~~be a substantial deviation from the Initial Approving Documents and therefore require a major amendment to the development plan.~~ TO

f.7. Site Plan Required – The implementation of an approved Planned Development development consistent with the approved development plan will require approval of a site plan in accordance with the requirements set forth in Article 7. The Chief of Planning will determine the level of review required, based on the nature and complexity of the proposed site plan. ✓

25.14.08 – PD-RS (Rockshire)

AS APPLIED TO ONLY THE
PARTICULAR SITE PLAN FOR
WHICH THE APPLICATION
IS MADE.

MXE	120	20	None required; 10' min. if provided	25' or 1/2 height of building, whichever is greater	None 10' min. if provided	25' or 1/2 height of building, whichever is greater	None 10' min. if provided	See Sec. 25.13.05.b.2.(c) and 25.13.05.b.2.(e)
MXB	55	20	None required; 10' min. if provided	25' or height of building, whichever is greater	None required; 10' min. if provided	25' or 1/2 height of building, whichever is greater	None required; 10' min. if provided	
MXNC	45 ³	20	None required; 10' min. if provided	25' or height of building, whichever is greater	None required; 10' min. if provided	25' or height of building, whichever is greater	None required; 10' min. if provided	See Sec. 25.13.05.b.2.(e)
MXC	30'	20	10'	15'	None required; 10' min. if provided	25' or height of building, whichever is greater	None required; 10' min. if provided	
MXT	35	20	10'	10'	None	20'	None required; 10' min. if provided	

¹ *Nonresidential Land Abutting Side Setback* – This term also includes multi-unit residential uses with a height of 45 feet or greater.

² ~~*MXTD Height Increase*~~ – Height may be increased to 150 feet in accordance with is subject to the provisions of Section 25.13.05.b.2(a), below.

³ ~~*MXNC Height Increase*~~ – Height may be increased to 65 feet in accordance with the provisions of Section 25.13.05.b.2.(d) below.

2. Building Height

(a) *MXTD Zone*–

~~(b)(i)~~ Building facades adjoining a public street right of way should have a range of heights of between 45 and a maximum of 65 feet at the street ~~building line~~. Additional building height up to 120 feet at the street may be allowed where recommended by the Plan or where approved by the Mayor and Council as part of a project plan under Section 25.07.06. Building ~~walls~~ facades that exceed 250 feet in length should vary the façade height by at least ten feet (10') for some distance along the length of the ~~building wall~~ facade in order to avoid a monotonous, monolithic appearance.

DELETE.
OTHERWISE
APPLIES TO
ALL SIDES?

RESTORE.

(ii) _____ Where recommended in the Plan, or if approved by the Mayor and Council as part of a project plan approval in accordance with Section 25.07.06, building height may be increased beyond 120 feet up to 150 feet under the following conditions:

ADD TO
MXCD
USING
75'-12'

(i) _____ A. The public use space requirement must be provided on the site;

(ii) _____ B. The building footprint cannot occupy more than 80% of the net lot area;

(iii) _____ C. The building design exceeds the urban design recommendations of the applicable Master Plan; and

(iv) _____ D. The building must ~~be designed for maximum energy conservation and/or exceed~~ complies with any energy conservation standards set forth in this Code.

DELETE.
OTHERWISE
APPLIES TO
ALL SIDES?

(b) *MXCD Zone*— Building facades adjoining a public street right-of-way should have a range of heights of between 35 and a maximum of 50 feet at the street building line. Additional building height up to 75 feet at the building line may be allowed where recommended by the Plan or where approved by the Mayor and Council or Planning Commission as part of a project plan or site plan under Section 25.07.06 or Section 25.07.05 as applicable. Building walls facades that exceed 250 feet in length should vary the façade height by at least ten feet (10') for some distance along the length of the building facade wall in order to avoid a monotonous, monolithic appearance.

RESTORE

STREET

100' BLDG- ADJOINS
INDUSTRIAL = 50'
SETBACK?
VS. 25'?

(c) *MXE Zone* – Buildings that exceed 45 feet in height, and ~~do not~~ ^{DOES} abut any land existing or planned for a Single-Unit Detached or Semi-Detached Residential Zone, must be set back from the side and rear lot lines by a distance at least equal to one-half (1/2) the height of the building.

*
WRONG

(d) *MXNC Zone* - Building height may be increased up to 65 feet when found suitable in accordance with the Plan.

(iii) (e) *Layback Slope* – In addition to the height limits set forth in this Article, building height cannot penetrate a layback slope line of 30 degrees, beginning from the closest ground point of the lot line of any property in the Public Park Zone or within any Residential Zone where single unit detached, semi-detached, or townhouse development exists without regard to intervening roads or other transportation facilities as shown in Figure 13.1. This layback slope requirement does not apply to

(i) the following:

~~(i) Nonresidential historic sites or public parks in the Mixed-Use zones;~~

~~(ii) Sites in a single-unit detached residential zone developed or recommended for nonresidential uses;~~

~~(iii) Areas adjacent to the MXT Zone;~~

(ii) areas adjacent to Metro rapid transit or railroad right of way.

~~(iv) Areas adjacent to the MXC Zone; or~~

(v) Areas within a PD Zone.

RESTORE

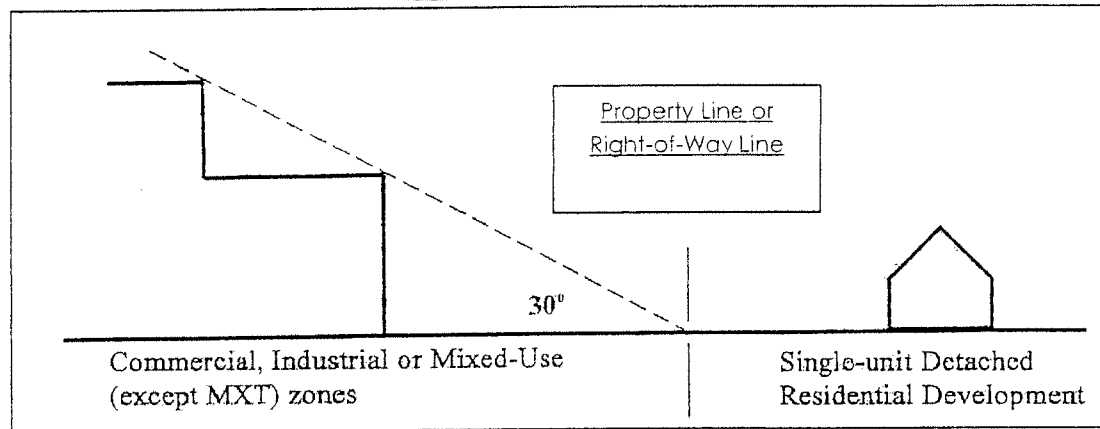


Figure 13.1- Layback Slope Example

c. Other Standards and Requirements for New Development or Redevelopment

1. *Conversion of Space* - Areas of a building originally designed for commercial or office use are encouraged to be designed to accommodate the conversion of the space to residential uses.
2. *Entryways* - Areas of a building originally designed for residential use at the ground floor level, having individual entries to the units, should have the entry from the ground level raised at least two (2) feet, or have another form of demarcation between the public sidewalk and the private entry. In order to be readily convertible to retail space, such areas must have a minimum ceiling height of 15 feet.

ARTICLE 8

MAYOR AND COUNCIL FINAL DRAFT 9-2-08

KOMINENS

9/9/08



(a) ~~All phases of a multi phase project for which a use permit or detailed application has been approved as of (date of adoption) must be commenced within eight (8) years from the date of the approval letter of the Approving Authority or the use permit will expire. A use permit will become void for those buildings within a multiple building development for which construction has not commenced within eight (8) years from the date of the use permit approval letter.~~

(b) ~~Any multi phase project for which a use permit was approved prior to October 25, 1993 that has not commenced construction on all buildings as of [effective date] has eight (8) years from [effective date] to commence construction on all buildings or the use permit will expire.~~

(c) ~~Nothing herein shall affect the validity of a use permit for a building constructed in accordance with the requirements of the use permit prior to the expiration for the time frames set forth herein.~~

c. Expiration of Development Approval – Upon the expiration of any development approval granted by an Approving Authority for a development prior to [effective date], or upon the granting of any subsequent superseding permit or other approval, the requirements of this Chapter shall apply to any new application for approval for development.

DOES IT
MEAN
AN IN
RESPONSE
APPROV

25.08.03 – Nonconformities, in General

Any use or development rendered non-conforming by the adoption of this Chapter or any amendment thereto, may continue subject to the limitations provided in this Chapter.

REST

25.08.04-03 – Qualifying Substandard Lots

Any lot legally recorded by subdivision plat that is at least 40 feet wide is deemed to be a buildable lot even though it may have less than the minimum area required in any current residential zone. Such lots may be developed under the zoning development standards in effect when the lot was recorded except that:

1. A lot created by deed prior to October 1, 1957 that is a minimum of 5,000 square feet in area and at least 40 feet wide may be recorded as a buildable lot;
2. The maximum building height and maximum building coverage for any building or structure must comply with the current standards of the zone in which the lot is classified;

repaired or replaced in kind in its original location, subject to approval of the Historic District Commission, notwithstanding ~~its the dwelling or resource's~~ failure to comply with any development standard contained in this Chapter. Any renovations or additions beyond the scope of the original structure ~~must comply is~~ subject to ~~with~~ the provisions of this Chapter.

c. *Nonconformity through Public Taking*

1. A building, structure, or site improvement is not a development standards nonconformity if it is located on an otherwise lawful lot and the lot was reduced in area by a taking under eminent domain or by government acquisition in lieu of eminent domain ~~or other government action~~ that would otherwise render the building, structure, or improvement nonconforming because a dimension of the building, structure, or site improvement or the location on the lot is deficient. The building, structure, or site improvement may be repaired, altered, or reconstructed, if it is an otherwise lawful use, only to the extent of original development existing on the date of the governmental ~~action~~ acquisition.
2. In the event such property is subject to redevelopment that includes the removal of the principal use or structure on the site, the new development must conform to all provisions of this Chapter.

d.g. *Nonconforming Alteration Approvals* – Any proposed alteration, expansion, or enlargement ~~to a development standards nonconformity under this Section~~ Section 25.08.05.a. must comply with the nonconforming alteration permit requirements set forth in Section 25.08.07.

ONLY
THE
PUBLIC
BEING
CHANGED

e.h. *Sidewalk Modifications* - Sidewalks on private property that do not meet the standards set forth in Section 25.17.05 are not nonconforming and may be repaired or replaced in kind. If the property is subject to development or redevelopment, then all sidewalks ~~should comply with~~ are subject to the guidelines set forth in Section 25.17.056.

25.08.06 – Certain Existing Structures or Development

- a. Any existing structure or development ~~that no longer conforms to the development standards of the zone in which it is located, but does conform to the development standards and requirements in effect immediately prior to [effective date] is considered to be conforming for purposes of reconstruction subject to the following.~~ AND IS

SHOULD
"CONFORM"
FOR ALL
PURPOSES

OR FOR WHICH DEVELOPMENT APPROVAL SUCH AS A USE PERMIT
APPROVAL, DETAILED APPLICATION APPROVAL, BUILDING PERMIT APPROVAL
OR ANY OTHER DEVELOPMENT APPROVAL HAS BEEN OBTAINED
AS OF [EFFECTIVE DATE]

- e-1. In the event the structure or development is damaged or destroyed by fire, flood, explosion, or other cause or casualty outside the control of the property owner, the structure or development may be reconstructed to the density and configuration which existed immediately prior to the damage or destruction. An additional five percent (5%) of gross floor area may be built provided that it does not create, extend, or enlarge any development nonconforming.
2. If a structure is demolished, or a redevelopment of a site occurs, due to causes within the control of the property owner, all reconstruction and redevelopment must comply with the development standards and requirements of the zone in which the property is located.
- b. Any expansion, alteration or enlargement to the portion of the structure or building that no longer conforms to the development standards of the zone in which it is located is subject to the provisions of Section 25.08.05.a. and Section 25.08.07.
- e-c. If extensions or additions to such an existing structure or development cumulatively exceed 50% of the existing gross floor area, the entire structure or development must comply with all of the then current development standards contained in this Chapter.

25.08.07 – Nonconforming Alteration Approval

a. Requirement

1. *Chief of Planning Review* – Nonconforming alteration approvals by the Chief of Planning are required in order to maintain nonconforming zoning entitlements for the following:
 - (a) Expansion of a nonconforming use to those parts of a building that were specifically designed or arranged for such use prior to the date when such use of a building became nonconforming; or
 - (b) The modification of any nonconformity on a Single Dwelling Unit Residential Zone lot, and/or
2. *Planning Commission Review* – Nonconforming alteration approvals by the Planning Commission are required to maintain nonconforming zoning entitlements for the following:
 - (a) Expansion, modification, or structural alteration of a structure or premises occupied by a nonconforming use, and/or

ARTICLE 3

COUNCIL FINAL DRAFT 9-2-08

KOMINERS
9/9/08



Impervious Surface - An area that prevents or severely restricts water from reaching the sub-surface and recharging groundwater. This condition can be caused by a structure, paving, compacted soil or gravel or other feature that forms a barrier between precipitation and the earth's surface. Impervious surface also includes elevated structures, such as a bridge or deck regardless of whether the land surface beneath it itself is pervious or impervious.

Improvement - Any building, structure, road, driveway, parking or loading area, pedestrian path, landscaping, screening, fencing, or recreational facility.

Improvement, Public - Any or all of the following improvements for the benefit of the public generally: roads and streets, alleys, grading, road pavement, fire hydrants, curbs and gutters, sidewalks, crosswalks and pedestrian paths, water mains, sanitary sewer lines, storm drains, drainage structures, rain gardens, stormwater swales, curb returns, sidewalks and driveway entrances in rights-of-way, guardrails, retaining walls, sodding, planting, monuments, streetlights, and other infrastructure owned by the City or other governmental entities.

OVERALL

~~Initiation~~ Approving Documents - The collection of documents that establish the density, use, and development standards that guide the build out of a planned development located in any of the Planned Development zones contained in Article 14 of ~~the~~ **this** chapter. Those documents include one or more of the following:

- a. Any resolution of approval by the Mayor and Council and any subsequent amendment thereto including any attachments;
- b. Any preliminary development plan approval by the Planning Commission and any subsequent amendment thereto including any attachments;
- c. Any annexation agreement or other development agreement;
- d. The provisions of this Chapter applicable to the particular planned development ~~at the time of~~ and not inconsistent with, the resolution of approval or the approved Preliminary Development Plan.

ARE INCORPORATED BY REFERENCE.

ON ~~THE~~ [DATE],
IMMEDIATELY
BEFORE THE
ADOPTION
THIS CHAPTER

Interim Historic Review - That period of time between the initiation of the historic designation process as set forth in Sec. 25.14.01.d.1 and the final determination by the Mayor and Council as to whether the property is historic.

Interior Lot - See "Lot, Interior."

Junk Yard - Any land or building used for the abandonment, storage, keeping, collecting or baling of paper, rags, scrap metals, other scrap or discarded materials, or